

# **APPENDIX 10**



*COMMONWEALTH OF VIRGINIA*  
*Office of the Governor*

Testimony of  
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**Commonwealth of Virginia**

**Subcommittee on Water Resources and Environment**  
**Committee on Transportation and Infrastructure**  
**U.S. House of Representatives**

**September 22, 2009**

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Madame Chair and Members of the Subcommittee:

Thank you for inviting me to testify before the Subcommittee today. I express on behalf of Governor Kaine the Commonwealth of Virginia's appreciation of your leadership in addressing matters affecting the Chesapeake Bay. As you know, restoring the Bay – improving its water quality well beyond what it is now – has been a longstanding priority of numerous Virginia governors, and the Virginia General Assembly has worked in a bi-partisan way in recent years with governors to make record investments in wastewater treatment plant upgrades and agricultural best management practices to control animal and fertilizer runoff.

I am here today to address principally the reauthorization of the U.S. Environmental Protection Agency's (EPA) Chesapeake Bay Program. However, as you know, no congressional testimony from a state official is complete without a bit of state bragging. So permit me to do so as I discuss some efforts by Virginia to improve the Bay's health. Such a prelude is relevant, I believe, for you to undertake in proper context the Chesapeake Bay Program's reauthorization.

Over the last four years, Virginia has invested more than \$1.1 billion in Bay clean-up efforts. This includes a record \$200 million cash deposit in our state's Water Quality Improvement Fund (WQIF) by former governor Mark Warner and a \$250 million bond initiative by Governor Tim Kaine.

This record funding in Virginia has principally allowed us to work with local governments to upgrade more than sixty locally-owned wastewater treatment plants that discharge into Bay

tributaries as well as invest heavily in cost-share programs with farmers to install agricultural best management practices to reduce farm-related runoff, whether from animals or crop fields.

The WQIF is used principally to help local governments pay for nutrient-removal technologies from sewage treatment plants. Our legislature has supported both of these executive branch efforts. As a result, Governor Kaine was able to announce in December 2007 that Virginia will indeed meet its commitment in a multi-state Bay agreement to upgrade wastewater treatment plants in the watershed by 2010.

Additionally, I would say that on top of the hundreds of millions of dollars being allocated to improving sewage treatment plants, Virginia put in place a handful of years ago what I believe to be the most comprehensive – and successful – nutrient credit trading program in the nation. It played a critical role in helping accelerate the pace of sewage treatment plant upgrades, thus enabling Virginia to meet the 2010 deadline. Without the trading program, I am confident that Virginia would have failed to meet the deadline. The EPA has praised the success of our nitrogen and phosphorus market-based trading system. The Virginia Department of Environmental Quality regularly receives inquiries from other states seeking to learn more about this trading program.

Part of the state Water Quality Improvement Fund can be used to support a cost-share program with Virginia farmers to install agricultural best management practices. Over the last several, we have provided nearly \$60 million to fund in partnership with participating farmers what we have determined to be the five most effective best management practices: fencing livestock out of streams; adopting low- or no-till practices; establishing vegetative buffers between fertilized fields and nearby streams; crafting nutrient management plans for fields; and planting cover crops to absorb nutrients.

Additionally, Governor Kaine has embarked upon a land-conservation initiative that may well be the most aggressive such program in the nation's history. Within three months of taking office, Governor Kaine set a goal of placing into permanent conservation an additional 400,000 acres of land over his four-year term. To put that in perspective, such an amount of land is twice the size of the Shenandoah National Park; it is equivalent to the whole of Fairfax County and almost all of neighboring Loudoun County; or, it equals almost all the land on Virginia's Eastern Shore. Preserving land preserves local water quality. I am happy to report that we are on track to meet this aggressive 400,000-acre goal within the remaining four months left in Governor Kaine's term. The funding that has made this land conservation initiative a success is wholly separate from the \$1.1 billion that has been spent on water quality improvement initiatives I mentioned a moment ago.

As much as our governors and legislature have done, however, we have a long way to go to realize a restored Chesapeake Bay. And I also want to recognize great efforts by other Bay watershed jurisdictions who have taken Bay restoration seriously. Again, we have made progress in reducing nitrogen and phosphorus pollution to the Bay. No one can deny that. But

so much more needs to be done, and it will take the combined efforts of the federal and state governments, building and agricultural interests, and homeowners.

I would like to address three general topics this afternoon.

First, I would like to say a word about the Chesapeake Bay Executive Council, because over the last year this group of leaders has made tough decisions – including admissions of collective failure over decades past – and charted a new approach for Bay clean-up efforts that center on greater transparency and accountability.

Second, I want to speak about the importance of the federal government's role in working with states to restore the Bay's health.

And third, I want to provide a list of specific suggestions that I believe should be in any legislation to reauthorize the Chesapeake Bay Program.

### **The Chesapeake Bay Executive Council – Requiring Greater Transparency and Accountability**

Governor Kaine of Virginia is currently chair of the Chesapeake Bay Executive Council, which is comprised of the governors of Virginia, Maryland, and Pennsylvania, the mayor of the District of Columbia, the administrator of the U.S. Environmental Protection Agency (EPA), and the chair of the Chesapeake Bay Commission. As the Virginia governor is chair of the Chesapeake Bay Executive Council, I, as Virginia secretary of natural resources, chair the Executive Council's Principals' Staff Committee (PSC).

Governor Kaine has worked especially closely with his Executive Council colleagues, and I accordingly have worked closely with my counterparts. Together, the Executive Council has acknowledged that several decades of effort to restore the Bay – effort governed principally by several successive multi-state agreements – have not gotten us to the level of restoration desired. Yes, progress has been made, but not to the extent many citizens in the 64,000 square mile watershed had hoped to see by now.

With this acknowledgement, Governor Kaine and the Executive Council have sought not only more from themselves, but also more from the federal government. I will note in my remarks how both the federal government and the states are stepping up efforts. Many Bay watershed jurisdictions also are asking more of local governments, developers, farmers, and homeowners through greater voluntary efforts, public-private partnerships, more stringent regulations, and public-awareness campaigns.

Last year, Governor Kaine and the Executive Council acknowledged that we would not meet the 2010 restoration goals set forth in the Chesapeake 2000 Agreement. They were applauded by many for saying so. The Executive Council decided to take a different approach, one more accountable and transparent to the public. They also were applauded by many for this.

In short, the Executive Council said, instead of setting very long-term goals – the Chesapeake 2000 Agreement set one for 2010 – they would set water quality improvement goals and targets within smaller, more measurable two-year periods. No longer would we set a goal and wait a decade or longer to assess it and determine success or failure. Instead, with short, two-year milestones, it would become readily apparent to watchful Bay stakeholders whether we were making progress or not. If measures after two years showed progress and measures met, great; if measure after two years showed failure, the public would immediately know it, likely demand changes, and policymakers could make strategic changes to get Bay restoration back on track. This new approach has been widely acknowledged as an improvement.

Currently, the seven jurisdictions that make up the Bay watershed – Virginia, Maryland, Pennsylvania, West Virginia, Delaware, New York, and the District of Columbia – are at work setting water quality improvement goals that will comprise their first set of two-year milestones. Setting these individual state milestones involves a great deal of assistance from the EPA's Chesapeake Bay Program, which is based in Annapolis, Maryland, and is charged with developing a very sophisticated computer model that helps inform each state what it must do to reduce millions of pounds of nitrogen, phosphorus, and sediment from polluting the Bay.

Preliminary calculations suggest that we need to reduce nitrogen pollution by an additional 136 million pounds and phosphorus by another 5 million pounds. Needed sediment reductions are still being calculated. Generally speaking, each individual state is free to determine the strategy that works best to achieve a state's share of pollution reduction. Each state will be held accountable under the two-year milestone approach for meeting its reduction targets.

Significantly, the Chesapeake Bay Executive Council agreed that "no later than 2025," the six Bay jurisdictions should have in place all policies and funding mechanisms that – according to the best data and modeling available – should allow the Bay's natural system to take it from there and restore itself to acceptable health. That acceptable health is defined as all of the waters of the Bay and tidal rivers having adequate levels of oxygen, water clarity and chlorophyll (i.e. algae levels). Of course, the "no later than" language means that jurisdictions could act more aggressively and meet restoration goals earlier.

#### **Importance of the Federal Government's Role in Restoring the Chesapeake Bay**

Now, let me speak on the importance of the federal government's role in Bay restoration efforts that will complement what Bay watershed jurisdictions are doing.

In doing so, I must first say this: the federal government has done very little in recent years to pull its share of the load. In fact, I might even say that the federal government has harmed efforts. While states like Virginia have been increasing funds from our own treasuries for Bay clean-up initiatives, the federal government has been cutting funding to states that

could be put toward local water quality improvement and Bay restoration. For example, federal allocations have been cut for such programs as the NOAA Chesapeake Bay office, oyster restoration, and the Clean Water State Revolving Loan Fund (SRF). To highlight, at the same time that Virginia was investing record amounts of funds to upgrade sewage treatment plants, federal appropriations to the SRF fell by approximately fifty percent. However, I must note one significant bright spot in federal funding – the significant funds that were authorized to the Bay states via reauthorization of the Farm Bill. We are extremely grateful for that support.

That said, I speak for many when I say that I believe a new day has dawned when it comes to federal support for Chesapeake Bay restoration. We are very pleased to see an unprecedented amount of federal attention being paid to the Chesapeake Bay.

This unprecedented level of federal attention has been spurred by the first-ever Presidential Executive Order on the Bay, which President Obama signed on May 12, 2009. Integral to the issuance of this historic Executive Order was the work of EPA Administrator Lisa Jackson and her advisor on Chesapeake Bay matters, Chuck Fox.

The Executive Order called for quick action – namely, the drafting of seven specific reports within 120 days by various executive branch agencies that collectively would define stepped-up federal leadership and redefine the federal government's partnership with Bay states. These reports – currently in draft form – were released about two weeks ago. We are now in a public-comment phase, during which stakeholders are assessing the reports and the EPA is reaching out to the states to gain critical feedback. After the public and states have reviewed and commented on the reports, the EPA will proceed in preparing an implementation strategy to improve local water quality and the Bay's health – address such things as determining what new water quality improvement tools might be needed, placing greater emphasis on stormwater management, supporting better scientific research, and re-emphasizing habitat and fisheries, to name a few.

There can be little question that this Presidential Executive Order and the resulting federal and state actions open up a new era and create a renewed sense of optimism for returning the Bay to better health. The work ahead should be more comprehensive and aggressive than ever before, it should be more coordinated and planned between federal and state actions, and the work should be more easily measured and transparent.

#### **Ten Critical Actions to Move Us Toward a Cleaner Chesapeake Bay**

So, Madame Chair, with all of this said – including a bit of state bragging and deserved praise for an obvious new level of federal interest in the Chesapeake Bay – what is it that I believe are the most important action items that will move us all toward a healthier Bay? I have ten. And they all should be addressed as part of any legislation to reauthorize the EPA's Chesapeake Bay Program.

- (1) *Provide federal financial assistance.* I list this first because, quite frankly, the resources do not exist, nor will they exist, solely at the state level. I noted earlier in my remarks that while Bay jurisdictions have been increasing funding to Bay restoration, the federal government has been cutting funds that would aid restoration. Funding must be a part of legislation to reauthorize the Chesapeake Bay Program – and it should not be cast in terms of costs, but in terms of investment. A fully restored Bay would provide a significant economic boom to all Bay jurisdictions.

The Bay is a “national treasure,” as it was declared in President Obama’s Executive Order. Its restoration should be a federal-state partnership. And that means both parties must significantly contribute to clean-up efforts.

I have had the opportunity to review a draft reauthorization bill from Senator Cardin of Maryland. In that legislation, he proposes authorizing \$1.5 billion in grants to localities to address suburban and urban pollution run-off. While such funding would be greatly appreciated, I suggest that the use of such funds should be made available to restoration efforts beyond what would mostly be suburban and urban stormwater management. In Virginia, for example, we estimate that if agricultural conservation practices were to be well funded and aggressively implemented, we could achieve a full 60% reduction in all nonpoint source pollution. Getting that 60% reduction, and maintaining it, would require that we invest an estimated \$100 million per year in Virginia. There is no dispute that agricultural conservation practices are among the most cost-effective means to achieving nonpoint source pollution reductions. So why would we not apply stepped-up federal funding toward it?

As I am proposing increased federal funding, however, I must note a few questions that have been raised relative to it. For example, if a state proposes aggressive restoration actions based on the presumption that federal financial assistance will be available, will the state be expected to complete those actions? And, if the state does not due to unrealized federal support, will that state be found by EPA to be in non-compliance? Would consequences be enacted as a result of such “non-compliance” under these circumstances? Obviously, states are willing to step up and be aggressive – after all, states have even as the federal government has not. However, we do not want to be unjustly penalized for circumstances beyond our control.

- (2) *Define “reasonable assurance.”* The six states and the District of Columbia in the 64,000 square mile watershed are moving forward with EPA to develop a Total Maximum Daily Load (TMDL) for the Bay. As you might imagine, this is a mammoth undertaking. A key point of discussion among all jurisdictions and many stakeholders has been to define “reasonable assurance.” That is, EPA demands that the states and DC be able to demonstrate reasonable assurance that the jurisdictions have the necessary tools, resources, and capacity to implement actions proposed in jurisdictional implementation plans. This is the key component that will assure EPA that the states and DC can be held accountable and that real, measurable restoration progress is achieved.

It is critical that any Chesapeake Bay Program reauthorization legislation clearly define what is needed to meet the “reasonable assurance” test. Not only is this clarity needed so that each jurisdiction can adequately develop its implementation plan, but also that a level playing field is created and that each jurisdiction is held to the same expectations. I can assure you that all six states and DC agree on the need for this to be addressed in the legislation.

(3) ~~Require short-term implementation plans.~~ You will recall that I said earlier in my remarks with some pride that Governor Kaine and his colleagues on the Chesapeake Bay Executive Council have adopted a new strategy that is more transparent and accountable – they decided to proceed incrementally and set water quality improvement targets within successive two-year periods that can be measured and publicly reported on along the way toward their 2025 restoration end date. This two-year milestone strategy should be used in future years to explain – in detail – the actions that will be taken, the existing and anticipated resources to be made available to support the actions, and the pollution reductions to be achieved as a result of them. These two-year milestones should be the primary tool by which EPA judges accountability, reasonable assurance, and progress. Any Chesapeake Bay Program reauthorization should reflect this two-year milestone strategy.

(4) ~~Impose consequences for failure.~~ First, let me say that it is not common for me to suggest to the federal government that it bring its wrath upon states, especially my own. But we are at a critical point in our efforts to restore the Bay when assessed against the tremendous population and commercial growth that is occurring in the Bay watershed. One only needs to look at the pace of impervious surface to understand that.

I cannot ask the federal government to increase funding to the states and DC by billions of dollars and not expect consequences when states fail to meet their nutrient and sediment reduction targets. On the contrary, I indeed should expect consequence. As a members of a governor’s cabinet and as a former state legislator, I can assure you that without certain EPA-imposed consequences for failure to meet pollution reduction targets in the two-year milestones, states (governors and legislatures) will not take EPA seriously, and the states will not take the necessary actions, including committing resources, to clean up the Bay.

That said, I also must say that the federal government should not be without blessed grace. For example, several years ago, no one would have predicted that our nation’s robust economy would move to the brink of total collapse. While I ask for swift and certain consequences for failure, I also say that consequences should not be imposed irrationally, especially when circumstances beyond a state’s control are at play. The congress must decide in any reauthorization legislation when and under what circumstances to impose consequences. The legislation also should clearly state the



criteria and decision-making process on determining how consequences will be imposed.

- (5) Ensure equity. An equitable distribution of responsibility among the Bay watershed's jurisdictions and pollution sectors is a very important component of a successful restoration strategy. All Bay partners are currently working through this issue as we develop a Bay TMDL.

I want to stress two key issues regarding equity. First, we will not restore the Bay without every sector – wastewater, suburban and urban stormwater, agriculture, air, and individual homeowners – doing their part. Pollution reduction from every sector must be significant. No one can be excused from sharing in this restoration effort. Second, flexibility with regard to equity should be left up to the individual jurisdictions, who can address it in their TMDL implementation plans and two-year milestones. If there are to be sufficient consequences exacted upon jurisdictions for failure to meet pollution reduction targets, then jurisdictions should be given the flexibility to determine how each sector should optimally be involved. For example, from a cursory review of Virginia's first 2-year milestone, it could be interpreted that we are relying on agriculture to carry a disproportional share of the pollution reductions and that equity has not been established. More accurately, what we have done is rely upon very cost-effective agricultural practices to achieve significant near-term reductions, while we finalize other administrative actions (e.g. significantly revised stormwater regulations) that will achieve reductions from the urban sector in our next 2-year milestone. In hindsight, had we developed milestones several years ago, one could have made the claim that we were disproportionately relying on the point source discharges to shoulder the largest portion of the workload. In summary, any measures to define equity must not be myopic in nature and should apply over the long-term.

- (6) Establish a Chesapeake Bay restoration deadline. I said earlier in my remarks that Governor Kaine and his Chesapeake Bay Executive Council partners have agreed upon a Bay restoration end date – it is to be “no later than 2025.” Just as it is important to show continued progress, it is equally important to set an ultimate end by which all restoration actions will have been put into place.

The 2025 end date (actually, no later than 2025) is only 16 years away. That necessitates aggressive action by the six Bay watershed states and DC and all other stakeholders – local governments, developers, farmers, and homeowners.

Senator Cardin's legislation proposes an end date of May 12, 2020, for each jurisdiction to have fully implemented its restoration plan. (This specific date keys off of the date President Obama signed the Chesapeake Bay Executive Order this year.) While I fully support the need for each state to fully implement its plans as soon as possible, I do not think doing so by 2020 is possible given the magnitude of the challenge, especially from a funding perspective. I, therefore, hope that any Chesapeake Bay Program

reauthorization legislation will reflect the “no later than 2025” end date that has been endorsed by the governors of Virginia, Maryland, West Virginia, Pennsylvania, Delaware, and Pennsylvania as well as the mayor of the District of Columbia, the EPA administrator, and the chairman of the Chesapeake Bay Commission.

- (7) *Expand authority.* A large portion of the nutrient and sediment pollution that currently enters our waters originates from sources that are currently not under any state or federal regulatory requirements. The most frequently cited example of this is agriculture. It is true that some forms of agriculture are currently subject to regulation – such as large animal operations or farms that land-apply a certain amount of animal manure – but EPA estimates that less than 20% of the nutrient and sediment run-off from agricultural lands in the Bay watershed are currently governed by federal regulations. Similar but lesser imbalances can be cited in the urban and air pollution sectors.

It is our hope in Virginia that we can continue to make substantial progress in evening out these kinds of imbalances through incentive-based programs. However, given the need to provide “reasonable assurance” that we have the necessary tools and ability to enact our implementation plan, it is critical that we be granted regulatory authority in the event additional oversight is needed at the state level. Such additional authority should be outlined in reauthorization legislation. The draft reauthorization bill from Senator Cardin proposes expanding the state’s permitting authority, under section 402 of the Clean Water Act, to any pollution source if necessary for a state to achieve the pollution reductions required in their tributary implementation plans. Again it is my hope that such tools will not be needed, but they should be made available.

- (8) *Provide for better tracking and accounting of agricultural nutrient reduction actions.* As we accelerate the pace of restoration, it is very important that all pollution-contributing sectors be included. Equally, it is important that all sectors have their good works accurately tracked and recorded – whether those good works are from voluntary actions, through incentive-based programs, or as a result of regulations.

Virginia’s agricultural community has informed us that there are potentially far more agricultural conservation practices in place – and keeping nutrient pollution from local waters and the Bay – than previously thought. If this is the case, then we need to know about it, as it could lessen the burden on farmers. Pollution reductions achieved on agricultural lands through voluntary actions are neither tracked nor accounted for in the existing Chesapeake Bay Program structure. In the name of fairness, this should be changed. We need better coordination and data-sharing between federal and state agricultural service agencies to ensure that all conservation practices are adequately counted.

- (9) *Establish innovative tools.* As I bragged early in my remarks, Virginia has achieved significant progress in meeting pollution reductions targets from wastewater treatment

plants because we were able to establish a nutrient credit trading program for point-source facilities. That trading program was put into place about five years ago. Now, new or expanding point sources can obtain nutrient offsets through implementation of agricultural practices. We have recently finalized guidelines to help localities navigate that process. Further, just this year, the General Assembly expanded the trading program to include the use of off-site nutrient credits, thus allowing development projects to better meet stringent pollution run-off standards. Given the high level of pollution reductions that are needed from all sectors throughout the Bay watershed, it is imperative that states are empowered to use create and deploy innovative tools that can be shown to be effective. Trading and offset programs are just examples.

- (10) ~~Avoid redundancy~~ The challenge to restore the Chesapeake Bay is a significant one. It does not need to be made more difficult by our own bureaucratic bumbling. Federal and state regulators should not duplicate each other's efforts. States are already subject to numerous reporting requirements that can be amended or revised to fulfill any additional state reporting requirements.

If you adopt in any Chesapeake Bay Program reauthorization legislation the provision for two-year milestones, as I have suggested, the success or failure of pollution reduction goals as reported from those milestone strategies should acceptable reporting for other federal requirements. Also, in Virginia, our state law requires the executive branch to submit to the General Assembly an annual clean-up plan for the Bay and other Virginia waters. That report to our state legislature also should be acceptable in meeting certain other federal reporting requirements. Thus, I ask that reauthorization legislation provide the maximum amount of flexibility possible to jurisdictions for the purpose of meeting federal reporting requirements.

### Conclusion

Madame Chair and members of the Subcommittee, this concludes my testimony. I again thank you for inviting me to appear before you, and I speak for many in the Chesapeake Bay watershed who are grateful for your interest and support in our beloved Chesapeake Bay.

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